

Office of the Secretary, HUD

§ 5.508

INS means the U.S. Immigration and Naturalization Service.

Mixed family means a family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

National means a person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

Noncitizen means a person who is neither a citizen nor national of the United States.

Project owner means the person or entity that owns the housing project containing the assisted dwelling unit.

Public Housing covered programs means the public housing programs administered by the Assistant Secretary for Public and Indian Housing under title I of the 1937 Act. This definition does not encompass HUD's Indian Housing programs administered under title II of the 1937 Act. Further, this term does not include those programs providing assistance under section 8 of the 1937 Act. (See definition of "Section 8 Covered Programs" in this section.)

Responsible entity means the person or entity responsible for administering the restrictions on providing assistance to noncitizens with ineligible immigration status. The entity responsible for administering the restrictions on providing assistance to noncitizens with ineligible immigration status under the various covered programs is as follows:

(1) For the Section 235 Program, the mortgagee.

(2) For Public Housing, the Section 8 Rental Certificate, the Section 8 Rental Voucher, and the Section 8 Moderate Rehabilitation programs, the PHA administering the program under an ACC with HUD.

(3) For all other Section 8 programs, the Section 236 Program, and the Rent Supplement Program, the owner.

Section 8 covered programs means all HUD programs which assist housing under Section 8 of the 1937 Act, including Section 8-assisted housing for which loans are made under section 202 of the Housing Act of 1959.

Section 214 means section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a).

Section 214 covered programs is the collective term for the HUD programs to which the restrictions imposed by Section 214 apply. These programs are set forth in § 5.500.

Tenant means an individual or a family renting or occupying an assisted dwelling unit. For purposes of this subpart E, the term tenant will also be used to include a homebuyer, where appropriate.

§ 5.506 General provisions.

(a) *Restrictions on assistance.* Financial assistance under a Section 214 covered program is restricted to:

(1) *Citizens*; or

(2) *Noncitizens* who have eligible immigration status under one of the categories set forth in Section 214 (see 42 U.S.C. 1436a(a)).

(b) *Family eligibility for assistance.* (1) A family shall not be eligible for assistance unless every member of the family residing in the unit is determined to have eligible status, as described in paragraph (a) of this section, or unless the family meets the conditions set forth in paragraph (b)(2) of this section.

(2) Despite the ineligibility of one or more family members, a mixed family may be eligible for one of the three types of assistance provided in §§ 5.516 and 5.518. A family without any eligible members and receiving assistance on June 19, 1995 may be eligible for temporary deferral of termination of assistance as provided in §§ 5.516 and 5.518.

§ 5.508 Submission of evidence of citizenship or eligible immigration status.

(a) *General.* Eligibility for assistance or continued assistance under a Section 214 covered program is contingent upon a family's submission to the responsible entity of the documents described in paragraph (b) of this section for each family member. If one or more family members do not have citizenship or eligible immigration status, the

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family members may exercise the election not to contend to have eligible immigration status as provided in paragraph (e) of this section, and the provisions of §§ 5.516 and 5.518 shall apply.

(b) *Evidence of citizenship or eligible immigration status.* Each family member, regardless of age, must submit the following evidence to the responsible entity.

(1) For U.S. citizens or U.S. nationals, the evidence consists of a signed declaration of U.S. citizenship or U.S. nationality. The responsible entity may request verification of the declaration by requiring presentation of a United States passport or other appropriate documentation, as specified in HUD guidance.

(2) For noncitizens who are 62 years of age or older or who will be 62 years of age or older and receiving assistance under a Section 214 covered program on September 30, 1996 or applying for assistance on or after that date, the evidence consists of:

(i) A signed declaration of eligible immigration status; and

(ii) Proof of age document.

(3) For all other noncitizens, the evidence consists of:

(i) A signed declaration of eligible immigration status;

(ii) One of the INS documents referred to in § 5.510; and

(iii) A signed verification consent form.

(c) *Declaration.* (1) For each family member who contends that he or she is a U.S. citizen or a noncitizen with eligible immigration status, the family must submit to the responsible entity a written declaration, signed under penalty of perjury, by which the family member declares whether he or she is a U.S. citizen or a noncitizen with eligible immigration status.

(i) For each adult, the declaration must be signed by the adult.

(ii) For each child, the declaration must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(2) *For Housing covered programs:* The written declaration may be incorporated as part of the application for housing assistance or may constitute a separate document.

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(d) *Verification consent form*—(1) *Who signs.* Each noncitizen who declares eligible immigration status (except certain noncitizens who are 62 years of age or older as described in paragraph (b)(2) of this section) must sign a verification consent form as follows.

(i) For each adult, the form must be signed by the adult.

(ii) For each child, the form must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(2) *Notice of release of evidence by responsible entity.* The verification consent form shall provide that evidence of eligible immigration status may be released by the responsible entity without responsibility for the further use or transmission of the evidence by the entity receiving it, to:

(i) HUD, as required by HUD; and

(ii) The INS for purposes of verification of the immigration status of the individual.

(3) *Notice of release of evidence by HUD.* The verification consent form also shall notify the individual of the possible release of evidence of eligible immigration status by HUD. Evidence of eligible immigration status shall only be released to the INS for purposes of establishing eligibility for financial assistance and not for any other purpose. HUD is not responsible for the further use or transmission of the evidence or other information by the INS.

(e) *Individuals who do not contend that they have eligible status.* If one or more members of a family elect not to contend that they have eligible immigration status, and other members of the family establish their citizenship or eligible immigration status, the family may be eligible for assistance under §§ 5.516 and 5.518, or § 5.520, despite the fact that no declaration or documentation of eligible status is submitted for one or more members of the family. The family, however, must identify in writing to the responsible entity, the family member (or members) who will elect not to contend that he or she has eligible immigration status.

(f) *Notification of requirements of Section 214*—(1) *When notice is to be issued.* Notification of the requirement to submit evidence of citizenship or eligible

immigration status, as required by this section, or to elect not to contend that one has eligible status as provided by paragraph (e) of this section, shall be given by the responsible entity as follows:

(i) *Applicant's notice.* The notification described in paragraph (f)(1) of this section shall be given to each applicant at the time of application for assistance. Applicants whose applications are pending on June 19, 1995, shall be notified of the requirement to submit evidence of eligible status as soon as possible after June 19, 1995.

(ii) *Notice to tenants.* The notification described in paragraph (f)(1) of this section shall be given to each tenant at the time of, and together with, the responsible entity's notice of regular reexamination of income, but not later than one year following June 19, 1995.

(iii) *Timing of mortgagor's notice.* A mortgagor receiving Section 235 assistance must be provided the notification described in paragraph (f)(1) of this section and any additional requirements imposed under the Section 235 Program.

(2) *Form and content of notice.* The notice shall:

(i) State that financial assistance is contingent upon the submission and verification, as appropriate, of evidence of citizenship or eligible immigration status as required by paragraph (a) of this section;

(ii) Describe the type of evidence that must be submitted, and state the time period in which that evidence must be submitted (see paragraph (g) of this section concerning when evidence must be submitted); and

(iii) State that assistance will be prorated, denied or terminated, as appropriate, upon a final determination of ineligibility after all appeals have been exhausted (see § 5.514 concerning INS appeal, and informal hearing process) or, if appeals are not pursued, at a time to be specified in accordance with HUD requirements. Tenants also shall be informed of how to obtain assistance under the preservation of families provisions of §§ 5.516 and 5.518.

(g) *When evidence of eligible status is required to be submitted.* The responsible entity shall require evidence of eligible status to be submitted at the times

specified in paragraph (g) of this section, subject to any extension granted in accordance with paragraph (h) of this section.

(1) *Applicants.* For applicants, responsible entities must ensure that evidence of eligible status is submitted not later than the date the responsible entity anticipates or has knowledge that verification of other aspects of eligibility for assistance will occur (see § 5.512(a)).

(2) *Tenants.* For tenants, evidence of eligible status is required to be submitted as follows:

(i) For financial assistance under a Section 214 covered program, with the exception of Section 235 assistance payments, the required evidence shall be submitted at the first regular reexamination after June 19, 1995, in accordance with program requirements.

(ii) For financial assistance in the form of Section 235 assistance payments, the mortgagor shall submit the required evidence in accordance with requirements imposed under the Section 235 Program.

(3) *New occupants of assisted units.* For any new occupant of an assisted unit (e.g., a new family member comes to reside in the assisted unit), the required evidence shall be submitted at the first interim or regular reexamination following the person's occupancy.

(4) *Changing participation in a HUD program.* Whenever a family applies for admission to a Section 214 covered program, evidence of eligible status is required to be submitted in accordance with the requirements of this subpart unless the family already has submitted the evidence to the responsible entity for a Section 214 covered program.

(5) *One-time evidence requirement for continuous occupancy.* For each family member, the family is required to submit evidence of eligible status only one time during continuously assisted occupancy under any Section 214 covered program.

(h) *Extensions of time to submit evidence of eligible status—(1) When extension must be granted.* The responsible entity shall extend the time, provided in paragraph (g) of this section, to submit evidence of eligible immigration status if the family member:

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(i) Submits the declaration required under §5.508(a) certifying that any person for whom required evidence has not been submitted is a noncitizen with eligible immigration status; and

(ii) Certifies that the evidence needed to support a claim of eligible immigration status is temporarily unavailable, additional time is needed to obtain and submit the evidence, and prompt and diligent efforts will be undertaken to obtain the evidence.

(2) *Thirty-day extension period.* Any extension of time, if granted, shall not exceed thirty (30) days. The additional time provided should be sufficient to allow the individual the time to obtain the evidence needed. The responsible entity's determination of the length of the extension needed shall be based on the circumstances of the individual case.

(3) *Grant or denial of extension to be in writing.* The responsible entity's decision to grant or deny an extension as provided in paragraph (h)(1) of this section shall be issued to the family by written notice. If the extension is granted, the notice shall specify the extension period granted (which shall not exceed thirty (30) days). If the extension is denied, the notice shall explain the reasons for denial of the extension.

(i) *Failure to submit evidence or to establish eligible status.* If the family fails to submit required evidence of eligible immigration status within the time period specified in the notice, or any extension granted in accordance with paragraph (h) of this section, or if the evidence is timely submitted but fails to establish eligible immigration status, the responsible entity shall proceed to deny, prorate or terminate assistance, or provide continued assistance or temporary deferral of termination of assistance, as appropriate, in accordance with the provisions of §§5.514, 5.516, and 5.518.

(ii) [Reserved]

[61 FR 13616, Mar. 27, 1996, as amended at 61 FR 60538, Nov. 29, 1996; 64 FR 25731, May 12, 1999]

§5.510 Documents of eligible immigration status.

(a) *General.* A responsible entity shall request and review original documents of eligible immigration status. The re-

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sponsible entity shall retain photocopies of the documents for its own records and return the original documents to the family.

(b) *Acceptable evidence of eligible immigration status.* Acceptable evidence of eligible immigration status shall be the original of a document designated by INS as acceptable evidence of immigration status in one of the six categories mentioned in §5.506(a) for the specific immigration status claimed by the individual.

[61 FR 13616, Mar. 27, 1996, as amended at 61 FR 60539, Nov. 29, 1996; 64 FR 25731, May 12, 1999]

§5.512 Verification of eligible immigration status.

(a) *General.* Except as described in paragraph (b) of this section and §5.514, no individual or family applying for assistance may receive such assistance prior to the verification of the eligibility of at least the individual or one family member. Verification of eligibility consistent with §5.514 occurs when the individual or family members have submitted documentation to the responsible entity in accordance with §5.508.

(b) *PHA election to provide assistance before verification.* A PHA that is a responsible entity under this subpart may elect to provide assistance to a family before the verification of the eligibility of the individual or one family member.

(c) *Primary verification—(1) Automated verification system.* Primary verification of the immigration status of the person is conducted by the responsible entity through the INS automated system (INS Systematic Alien Verification for Entitlements (SAVE)). The INS SAVE system provides access to names, file numbers and admission numbers of noncitizens.

(2) *Failure of primary verification to confirm eligible immigration status.* If the INS SAVE system does not verify eligible immigration status, secondary verification must be performed.

(d) *Secondary verification—(1) Manual search of INS records.* Secondary verification is a manual search by the